

Docket No. MERCURY.054A

CUSTOMER NUMBER 20995

Date: July 14, 2003

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In re application of : Eli Levy
Appl. No. : 09/531,821
Filed : March 21, 2000
For : SERVER MONITORING USING
VIRTUAL POINTS OF
PRESENCE
Examiner : Quang N. Nguyen
Art Unit : 2141
Confirmation No. : 7283

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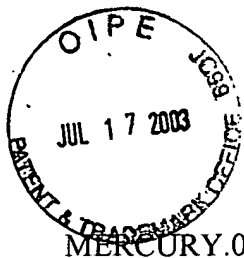
Technology Center 2100

Sir:

Transmitted herewith is a Reply Brief in triplicate to the Board of Patents Appeals, together with a return prepaid postcard.

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Ronald J. Schoenbaum
Registration No. 38,297
Attorney of Record
Customer No. 20,995
(949) 760-0404



MERCURY.054A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Eli Levy)	Group Art Unit: 2141
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REPLY BRIEF

Board of Patent Appeals and Interferences
Washington, D.C. 20231

Dear Sir:

This Reply Brief is responsive to the Examiner's Answer mailed on July 2, 2003. Appellant acknowledges the Examiner's withdrawal of the art-based rejection of dependent Claims 2-6, 21, 24, 25, and 31.

The comments and arguments presented herein are intended to supplement, and not replace, those presented in Appellant's original brief. Although only certain claims and claim groups are discussed in this Reply Brief, Appellant maintains that all of the pending claims are patentable over Chen and Boss.

Supplemental Discussion of Boss

The Examiner's Answer relies largely on the disclosure of Boss in maintaining the rejection of certain claims. The system disclosed in Boss differs significantly from that of the present application. For example, Boss's system apparently requires agent software (the "data gathering client component 402") to be executed on computers in each geographic location for

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which response times, as seen by end users, are to be measured. In this respect, Boss's architecture is the same as the prior art approach disclosed in the "Background" section of the present application. As disclosed in the present application, this prior art architecture has significant disadvantages:

A significant problem with the above approach is that the cost of setting up and maintaining agent computers in many different geographic regions is very high. For example, the monitoring service provider typically must pay for regional personnel who have been trained to set up and service the agent software and computers. The monitoring service provider may also incur costs for maintaining the security of the agent computers, and for upgrading the agent software as new versions become available.

Another problem with the existing approach is that problems with the Internet can inhibit or delay the reporting of performance data by the agent computers. As a result, the web site operator may not learn about a particular performance problem until well after the problem has been detected. [Present application at page 2, lines 17-27]

Boss apparently attempts to address the above-noted administration-cost problem by running the data-gathering client component 402 on computers of actual Internet users. See Boss at col. 16, line 48 to col. 17, line 5. This approach relies on the existence of Internet users who are willing to make their computers available as monitoring agents. In many cases, however, such users may not be available in a desired geographic region, or may have computers or Internet connections that are turned off or are not well suited for performance monitoring. In addition, the monitoring service provider in Boss's system cannot control how the agent software (data-gathering client component) is used. For instance, Internet users could potentially download and use the data-gathering client for malicious purposes, such as to launch denial-of-service attacks against specific web sites or to extract trade secrets.

Boss thus does not provide an adequate solution to the administration and security problems identified in the present application and repeated above. Boss also does not address the above-noted problem regarding the possibility that Internet problems will inhibit or delay the reporting of the performance data collected by the agent (data-gathering) computers. Chen does not offer solutions to these significant problems.

Appellant has solved the above problems in-part by running the agent software on computers in one or more centralized locations or data centers, rather than in each geographic

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location for which end-user performance is to be monitored. Given that Boss fails to suggest such an architecture, and fails to adequately address the above-noted problems identified in the present application, Appellant respectfully submits that the Examiner's reliance on Boss is misplaced. In this regard, Appellant respectfully submits that the Examiner has improperly construed some of his claim language to cover the system of Boss. Indeed, as discussed below, such constructions are inconsistent with the plain language of the claims, and are also unreasonable in light of the specification of the present application.

Examples of specific claim language that has been misconstrued are provided below.

Supplemental Discussion of Group 1 Claims

Claim 37 is the sole independent claim of Group 1. In analyzing Claim 37, the Examiner appears to take the position that Boss teaches a system in which a "data center sends request messages to the web site, and receives response messages from the web site, through the plurality of Internet connection points to monitor the web site as seen by users in each of the multiple geographic locations." Examiner's Answer at section 20, citing column 4, lines 10-17 of Boss.

In Boss' system, however, the task of sending request messages to the web site, and receiving responses to such requests, is performed by the data-gathering clients and not by the UseMon server 401. Thus, contrary to the Examiner's interpretation, the UseMon server is not a "data center [that] sends request messages to the web site, and receives response messages from the web site," as set forth in Claim 37. Rather, the UseMon server of Boss operates by instructing the geographically distributed data gathering clients to access the target web site, and by receiving and aggregating response time measurement values generated by such data gathering clients. As discussed above, this method of monitoring the target web site has significant disadvantages in comparison to Appellant's system.

In view of the foregoing, Appellant submits that the Examiner's interpretation of Claim 37 is inconsistent with the plain language of the claim. Appellants also believe the interpretation is unreasonable in light of the specification.

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Supplemental Discussion of Group 2 Claims

The sole independent claim of Group 2 is Claim 12. Claim 12 includes the following language: “whereby the system monitors the performance of the server system as seen from multiple user locations without the need for performance monitoring components local to said user locations.” At page 12 of the Examiner’s Answer, the Examiner appears to take the position that this language can be properly construed to cover the system described in Boss. Appellant respectfully disagrees.

Boss very clearly discloses a system in which the performance of the target server system, as seen from multiple user locations, is monitored using performance monitoring components (the data-gathering clients) in each of the user locations. In this regard, each data gathering client of Boss operates generally by accessing a target server from a respective user location, and by obtaining and reporting associated performance parameter values such as page load times. These performance parameter values indicate what a user’s experience would be if the user were to access the target server from the data gathering client. See col. 3, line 58 to col. 4, line 9 of Boss. No other method is disclosed in Boss for monitoring the performance of a target server system as seen from multiple geographically-distributed user locations.

Thus, contrary to the Examiner’s assertion at page 12 of the Answer, Boss does not disclose a system that monitors the performance of the target server system as seen from multiple user locations “without the need for performance monitoring components local to said user locations,” as required by Claim 12. Rather, Boss relies solely on an inferior approach in which computers in each of the user locations are used to measure server response times as experienced in such locations.

In view of the foregoing, Appellant submits that the Examiner’s interpretation of Claim 12 is inconsistent with the plain language of the claim, and is unreasonable in light of the specification.

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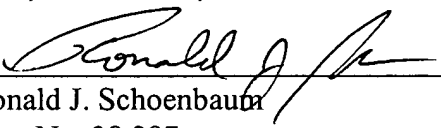
Conclusion

For the reasons set forth in the original brief, and for the additional reasons set forth above with respect to specific claims, Appellant submits that the obviousness rejection is improper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 7-14-03

By: 
Ronald J. Schoenbaum
Reg. No. 38,297
Attorney of Record
2040 Main Street
Irvine, CA 92614
949-721-2950

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